

**WORKERS' COMPENSATION ACT REVIEW  
Public Consultation**

**Willow Room, Yukon Inn, Whitehorse, Yukon  
March 24, 2006**

**Benefits Issues**

<b>PANEL:</b>	Patrick Rouble Ivan Dechkoff Michael Travill	Chair Member Member
<b>PRESENT:</b>	Douglas Rody Alan Byrom Robbie King Deborah McNevin Derek Holmes Beverley Blanchard Don Buyck Rick Karp Joe Radwanski	Yukon Federation of Labour Injured Workers' Alliance Injured Workers' Alliance Public Service Commission Public Service Commission, Health & Safety Na Cho Nyak Dun Na Cho Nyak Dun Whitehorse Chamber of Commerce
<b>OTHER:</b>	Joyce C. Bachli	<b>MEGA</b> Reporting Ltd.

(The meeting was called to order at 9:10 a.m.)

**Chair Patrick Rouble:** Good morning, everyone. My name is Patrick Rouble. I'm the MLA for the beautiful Southern Lakes and the Chair of the *Workers' Compensation Act* review panel. With me is Mr. Mike Travill. As to Mr. Travill's professional career, he has served extensively in various labour organizations and is currently the workers' advocate.

On my other side, I am joined by Mr. Ivan Dechkoff. In relation to Mr. Dechkoff's career, he is a past board member of Workers' Compensation and a past employer himself.

We have been tasked by the Minister responsible for the Workers' Compensation Health & Safety Board with identifying issues and concerns with the current Act and making recommendations to the Minister on how the Act should be amended in order to best serve the needs of all stakeholders. We are empowered to consult with stakeholders and review existing information, review other jurisdiction's legislation, contract for additional information, and then, present our recommendations for changes to the legislation to the Minister. We are committed to following the process that is inclusive, open and fair and that will ultimately produce recommendations that will ensure that the *Workers'*

*Compensation Act* meets the needs of all stakeholders to the greatest extent possible.

We are committed to the principles behind Workers' Compensation, and one of our key mandates is ensuring that those principles remain true in the legislation.

Currently Section 105 of the Act calls for the Minister to initiate a review no later than January 1<sup>st</sup>, 2003. Following the general election of November, 2002, this panel was appointed in December. So, we have identified a process to be used to conduct this review, including the identification of issues and the latest steps in the release of our latest document, which provides an analysis of the issues brought forward and a discussion of some of the options that are possible for amending the legislation or not amending the legislation.

In order to receive comments, the panel has created a schedule of public forums to provide an opportunity for people to voice their comments. The panel will also receive written submissions by mail, fax or e-mail or voice-mail. The panel recognizes that people and organizations have varying levels of interest in participating in an Act review, varying levels of time available to participate. There are other factors that can influence participation in a review such as this.

We are committed to accommodating the many diverse and some conflicting needs in order to ensure that people have opportunities to make meaningful comments to the panel.

When we first released our consultation schedule, we received some comments on that; and we have changed our schedule and our format in order to address those concerns. We have changed the format of the meeting to allow for open discussion this morning or a more open mike format for the first half of the meeting today to allow people to come forward and make their comments. This will allow people to then leave if they so choose. Also, individuals won't have to wait until a particular issue is brought forward before they speak to the issue that is important to them.

The proceedings of these meetings will be recorded and a transcription of the comments made available on the website. This will allow people access to the comments made without being present for the entire time. The comments that were made at the meeting two weeks ago have been transcribed, and they are available on the website now.

Concerns of the Stakeholder Advisory Group have also been addressed. The Stakeholder Advisory Groups are organizations and associations recognized by the Yukon Workers' Compensation Health & Safety Board, and the panel will meet with the Stakeholder Advisory Groups during the second half of the scheduled meetings, from 1:00 until 5:00. In keeping with the panel's philosophy

of being open, inclusive and fair, these meetings will also be open to the public. Those comments will also be transcribed and will be available on the website. The meeting minutes from the last meeting are now available on the website, also.

The panel trusts that you will find that these meetings will be beneficial, that they will be open and that they will provide you with an opportunity for you to make the comments that you would like to make to the panel. We hope that both the open mike format and the Stakeholder Advisory Group meeting, the day and evening meetings, the Whitehorse and community meetings and the opportunity to provide written, faxed, e-mail or voice-mail messages will provide Yukoners with opportunities to provide constructive comments.

The panel will then consider these comments as we continue to analyze and examine the issues put forward. The panel will then prepare recommendations for the Minister on how the panel feels the *Workers' Compensation Act* should be amended.

I would like to remind everyone that the meeting is being recorded, and a transcript of the proceedings will be available on the website.

As we turn this meeting over to you to hear your comments, I would also like to remind you folks that the panel is mandated to review the legislation, the *Workers' Compensation Act*. We cannot address individual situations or individual claims. We can only make recommendations on how the legislation should be changed.

Also, I should point out, too, that we are not the board. We are not the Workers' Compensation Health & Safety Board, and we can't speak on their behalf or address your specific concerns that might be with the board itself, either with the big "B" board or the directors or with the administration.

When you make your comments, if possible I would ask that you relate them to the issues that have been identified. The topic for discussion today is the benefits issues, which we have grouped together 21 different issues and different options for addressing those situations. The panel recognizes that in order to really look at Workers' Compensation, you have to look at the whole of it and how the different parts inter-relate. One of the challenges with that, though, is how do you discuss everything all at once, which was the reason why we broke it down into these different sections, based on governance, assessment, benefits and the appeals process dealing with policy issues. So, we recognized that there is an inter-relationship between all of the issues, but the focus for today is the benefits issue and specifically, the 21 different issues that have been brought forward by the panel, by the Auditor General at the last Act review and by you, the stakeholders involved with Workers' Compensation.

We are transcribing the comments today, so when you do make your comments, I would ask that you please introduce yourself. That way, it will be recognized in the minutes. If you would prefer to come up and make your comments from the podium, that's encouraged. If you would rather just sit at your seat, that works, as well. We are a small enough group that I think we can all hear without microphones and that type of thing.

There is a sign-in sheet; and I would ask if you haven't already put your name down and your contact information that you do so before you leave today. That way, we will have a record of how to get back to you folks with the next steps from the panel.

So, with that being said, I would like to turn the floor over to you folks and to anyone who would like to start off today with regards to benefit issues.

**Alan Byrom:** Just an initial question, Mr. Chair: Could you tell me who wrote this, please?

**Chair Patrick Rouble:** The panel did.

**Alan Byrom:** The panel; that's very interesting.

**Chair Patrick Rouble:** The panel sat down over many, many meetings. We received input from additional consultants, and we went through this document and pretty well –

**Alan Byrom:** Excuse me, Mr. Chairman, I went through the document myself, and I just asked you who wrote it, and you told me who wrote it. Thank you very much. We don't have a lot of time to do this.

**Chair Patrick Rouble:** Yes, sir.

**Rob King:** Comments or questions or new issues, are they being put up on your website? The stuff that's sent in to you by e-mail or by letter, how do we get to review these?

**Chair Patrick Rouble:** I'm not sure what you mean by "new issues".

**Rob King:** Well, we have until June 15 to submit issues, right?

**Chair Patrick Rouble:** May I clarify that?

**Rob King:** Yes.

**Chair Patrick Rouble:** The deadline for comments on the issues that have been identified and the work that the Act Review Panel is doing is June 15. We've gone through numerous steps in identifying the issues through the issues identified by the last Act review, issues identified by the Auditor General, issues identified by the panel; and issues brought forward by the various stakeholders and other interested parties. We've conducted a call for issues. We took that list of issues that was brought forward, sent it back to all stakeholders and interested parties, asked for comments on those. We had over 100 issues. We distilled those down to 88 issues. We took those 88 issues to the Minister. The Minister gave us direction to look into the 88 different issues and to provide comments on those. So, even if we do hear comments like, "This isn't an issue that you should address, we are mandated to reviewing those issues."

So, right now, we don't have the ability to add new issues to the list. We have the 88 that we're working with, and we would like to hear comments and feedback on how to address those 88 issues.

**Rob King:** Okay, well, that's my question here: Are you putting those comments on the website so we can see them, the public can see them?

**Chair Patrick Rouble:** Yes, the comments will be put on the website.

**Rob King:** Okay, thank you.

**Chair Patrick Rouble:** Yes, sir.

**Alan Byrom:** Mr. Chairman, I would just like to read from the comments on Issue #13, page 67, Section 6:

"The question of whether the system is/was intended to provide "full" as opposed to "fair" economic protection to workers often arises."

I would suggest that the opposition of full and fair and your raising that question is in the mind of the author. It is certainly not an opposition in my mind.

"Historically the systems in Canada and around the world have not provided full economic protection."

This is the first contradiction. Seventy-five percent of actual wage loss is not full protection; that's fair. Section 7 states that 75 earnings of gross earnings provides the majority of injured workers more than full replacement of economic loss; not fair. This means the author is saying that 75 percent of earnings guaranteed in the Yukon legislation is not fair compensation. As a support, he states:

“All other Canadian, American and Australian systems have opted to provide less than full economic loss replacement and in some cases it is substantially less.”

Fair.

According to the author’s line of reasoning, fair is not full; and not full is fair. These other systems are fair, and the Yukon is not. So, the author’s thesis is: Yukon legislation is not fair because it provides full economic protection, based on a percentage that historically is less than full, which is not fair. Which is fair, rather, 75 percent, a percentage that historically is less than full, which is fair? So, I would suggest this is a contradictory thesis. This is a spin. This is why I wanted to know who wrote it, because when you take 75 percent of gross and spin it into 100 percent net, and then, start telling people that injured workers are getting more than they earn, greater than their annual average, this is false information.

I would like to draw your attention now to Issue #14. Section 117 of the Act – and this is page 69, and it is Issue #14, and it reads:

“Section 117 of the Act provides the Board with the discretion to determine the period of time it considers fair and just to calculate “average weekly earnings”.”

This is a false statement. The period of time has already been determined by the legislation, as evidenced if you turn to option #2 in this same section. It is asking us to amend the legislation to include the board’s timeframe. Why would we have to amend the laws of the Act if the Act gives the board the authority to determine the period of time?

What the Act does, Mr. Chairman, it gives the discretion to the board to make a fair judgment on the period of time determined by the Act and the law.

So, what has happened here in Sections 13, 14, 15 and 16, this report attempts to justify and support the board’s policy, which is based on a misinterpretation, manipulation and falsification of the legislation; and in the process, the author is doing us a great service, because he has revealed exactly how the board manipulated the information. In order to justify the policy, he has to do what the board did.

**Michael Travill:**  
we’re here, –

So, I guess the question, Alan, and that’s why

**Alan Byrom:**

Right.

**Michael Travill:** – is you've identified sections of the Act, things such as the average weekly earnings shall be calculated, based on any sources of earnings over any period that the board considers fair and just. So, that's what the Act currently says.

**Alan Byrom:** Right.

**Michael Travill:** Our job was to put out that there was an issue about that particular issue and ask for your comments about whether that should be changed, and that's what we're doing is we're asking: Is there information or is there a position that you would like to take or advise us that you would like that section to be changed? We put the description in as neutral a terms as we possibly could and tried to explain the issue and the interpretation, and that's why it is that way. It is to develop the conversation and try to draw out from people whether they think, for instance – this Section 14 that you're talking about – whether their should be a prescriptive line in the Act that says how it should be done differently than what it is being done now. That is the question.

**Alan Byrom:** Oh, is it?

**Michael Travill:** Yes.

**Alan Byrom:** I was supposed to be the one asking the questions here.

**Michael Travill:** Yes, I'm sorry.

**Alan Byrom:** Just a minute, he's telling me what the question is?

**Chair Patrick Rouble:** Excuse me, the purpose of today is to find out do you agree with the way the legislation is written down, or do you have a suggestion as to how the legislation should be changed.

**Alan Byrom:** Right.

**Chair Patrick Rouble:** One of the options, and you'll see this identified for all the issues that have been brought before us is "No change to the legislation." Now, that isn't to say that it couldn't be addressed through a policy change or a practice change; but there could be situations where you feel the legislation is adequate. If you feel the legislation is inadequate, what direction would you like to see it go? That's what we would like to hear from you folks.

**Alan Byrom:** Why are we discussing the board's policy in this paper? Why are we justifying the policy of the board when we're supposed to be reviewing legislation?

**Chair Patrick Rouble:** I'm sure you can appreciate with all of the issues that were brought forward, the 88 issues, some have crossed the line between being a policy issue or being a legislative mandate. One of the challenges that we have faced is that some people have suggested that we entrench in legislation specific policies, and that's why it has come up; and sir, if you feel that it shouldn't be discussed and that the current legislation satisfies your interest, then please we would like to hear that you don't feel that the legislation should be amended to address this issue.

**Alan Byrom:** We do not have to amend the legislation, because changing the words of the definition does not change the law of the Act. So, what the board did is they based their policy on a fragment of the sentence in the definition to create a period of time that they think is fair and just. So, in other words, we are looking at a report that presumes to tell the stakeholders where the authority is in the Act for the board's policy, and it's the wrong answer. They built their policy on a wrong answer, given by the former-president to the Legislative Assembly as to the question. On what authority does the board do this? He gave the wrong answer. They have built their policy around the wrong answer, and your paper, which is asking us to look at legislation, to look at changes, presents that illegal element of how the board manipulated the language of the legislation; and in the process, you are doing the same thing.

So, I'm saying that this report – the question is: Is this review paper intended to mislead the stakeholders about the issues?"

And I'm saying that this is a false report. This is misleading information. And I could make a presentation on all the issues in 14, 15 and 16 where the legislation is bent out of shape. So, how can we review, present issues and options and discussion on the legislation that the report has bent out of shape?

You mentioned the issue "fair" initially. I read your thesis on "fair". "Full" is not "fair". "Fair" is not "full". In whose mind? In whose mind?

So, you could go through this whole thing where you get to the statement – if the board wanted to, it could easily interpret 75 percent of earnings is 75 percent net. How do you make that leap? Does that mean they can interpret the legislation any way they like? So, this is not about the changes, because the legislation all makes sense. It's plain English.

They raised the question: Should benefits be based on 36 or 37? Should we be calculating 75 percent gross or 80 on net? We should be looking at how 75 percent gross earns and works, how it benefits the workers on a broad section of workers. What happens when the worker gets deemed? We want to know how it works so we can evaluate what the option is and what the contrast is to that.

So, basically what I'm saying is because the language has been manipulated, because the legislation has been mismanaged for 13 years on this wordsmithing, what we don't have is a track record of what it would have been like to manage this legislation properly so we would know how 75 percent gross works if done properly. So, because we've got this mismanagement process for 13 years around this wrong answer, because the board doesn't think 75 percent of earnings is fair, as explained in the thesis, they decided to change that and create their own legislation.

**Ivan Dechkoff:** Well, how would you protect against that as far as a change to the Act is concerned, because that's what we're here for?

**Alan Byrom:** Okay, right, you wouldn't protect that by changing the Act. You would have to apply the laws of the Act.

**Ivan Dechkoff:** But our role is to look at the Act itself, not anything beyond that.

**Alan Byrom:** Okay, you could change the definition to say, "Look, this period of time we're talking about for you to consider fair and just, the period of time in 37(a) –" if you haven't figured it out – and this is not about average yearly earnings. It's about average weekly earnings. What you pay is 75 percent of earnings across the board for all injured workers in the Yukon; because in the Yukon demographic that is what works and what is the best option. So, you would have to spell it out, "You can't do this, and you can't do this and you have to do this."

Now, it was assumed, when the legislation was presented, that these people would manage it in a fair way. They'd understand the plain English; and if they don't understand it, they would get advice. Nobody expected them to beget some person in the policy department for a thought to arise in his mind, "Full is not fair. This is not fair. They're getting too much," then become the president, and then, develop the policy, and then, start ripping off workers, then start manipulating the legislation to cover the costs of mismanaging claims, all the way up to today; and I'm saying that that process is still continued in the paper. You would have to change the definition, and you would have to add to the definition specifically "This is what we're talking about." So, in other words, you're supposed to read the legislation like this: 36 tells you the amount. You go to 37, and it tells you what the amount is based on. Then you go to 117, and it tells you how to make the calculation. And then, you go to number 236, and it tells you the method and manner of making payment is up to you.

What the board did is they went to Section 117, the definition. They decided what the period of time was. Then they tried to make it look like it was related to Section 36(2), the method and manner of making a payment – so, it

looks like that's the method and manner of making the calculation – and they totally ignored 37(a). So, this report tells you that the board based their policy on 36(2) and not on 37(a).

**Michael Travill:** Okay, so, can I take it from the comments that we've had from you so far is that what you would like to see, in dealing with the benefit issues that we're going to be going through and addressing things like the calculation of earnings, et cetera, that you would like to see the Act – because we can only adjust the Act. We can't adjust anything else. We can't adjust policies or any of that, –

**Alan Byrom:** Right.

**Michael Travill:** – but that we then look at removing the board's ability to set these things, the board's ability to set policy or to determine what is fair and just, that we look at instilling in the Act what we hear from the stakeholders and the parties. That seems to be your concern is that the board is taking the Act and twisting it, and the board is doing that because the current Act allows them to do that.

**Alan Byrom:** No.

**Michael Travill:** It allows the board to interpret the different sections; and what I'm hearing from you is you would like to see us look at taking some of that discretionary ability out of the board's hands and putting it more clearly and more distinctly in the Act as to how to manage these things. Is that sort of where you're going with that, Alan?

**Alan Byrom:** Not at all. They have the discretion to make a fair judgment. How can you remove that? The whole legislation is based on one key value, one supreme value, and that is fair. So, when anybody looks at the legislation to review it, this review itself will be structured around that one principle whether the reviewer is clear about it or confused. So, what we have is people in power who are confused with their values, who don't know what "fair" means.

What I'm saying is this: The option is you don't change the legislation. The legislation is 75 percent of earnings across the board for all injured workers – there is no annual averaging – and you tell the board that "We're going to do it this way, because you're going to do it right:" because anything other than that is a reward for 13 years of mismanagement and abuse. So, we want it done right. You don't really have to change the legislation because, for example, that policy is going to go into court. A judge is going to decide whether or not that period of time is actually based on the period of time determined by the Act. The judge is going to decide what they've done. Why should we have to take it to court; but if we do take it to court, and the judge says, "This is the way it is," all we need is a

judgment from an authority to say, “This is the way it is. This is how we do this. This is how it’s interpreted. This is what it means,” and to say that what you have done is wrong. It’s not just wrong. It breaks the laws of the Act.

Now, what happened was, the problem was, nobody did that. Nobody stood up and did it. So, there was a failure to be responsible. Everybody washed their hands of it.

The Auditor General’s director said to me, “If we take these people to court, who is going to replace them? There is no management talent in the Yukon.” That means one law for the rich and one law for the poor. He said, “We don’t want to win this battle and lose the war!” But if they would have done what they should have done ... So, when the Auditor General says “There appears to be a confusion over the calculation of benefits”, that was a subtle hint to the board that there was something wrong with their method of calculation, the one they’d invented. They just didn’t take any pointers from that.

So, to summarize, we don’t change the legislation. We give the board an education on how we read it; and any time they don’t read it right, you apply the law. That’s what the law is for.

**Ivan Dechkoff:** Alan, your whole assumption is based on the issue of “fair”. Now, when we look at fair or anybody looks at fair, it’s from the perception of the reader or the person who is analyzing the issue. How do we make it clear what “fair” is?

**Alan Byrom:** Well, “fair and just” means “in accordance with the rules”. That’s what it means. So, if you commit a foul on the football field, it’s because you broke the rules. So, their idea of “fair and just” is their own little idea, just like you said your idea of “fair and just”; but it actually means “in accordance with the rules”, but fair must also be fair to the applicant. So, what they did is they took a period of time out of context, and they said, “It’s one year,” because they thought that was fair, fair in their own mind, fair in their own opinion; not fair in relation to the rules of the Act, because they’ve already decided, on the thesis of the reviewer, that “full” is not “fair” and “fair” is not “full”. We’ve already been through that. They argued that historically, you don’t get full compensation.

**Ivan Dechkoff:** But again, that’s in the perception of their mind that that was fair. Now, in the perception of your mind, you’re saying that’s not fair, but have you asked other people –

**Alan Byrom:** I’m saying “fair and just”, it means “in accordance with the rules”.

**Ivan Dechkoff:** But that’s a pretty vague statement.

**Alan Byrom:** That is a very precise statement.

**Ivan Dechkoff:** But if the rules are vague to start with, then –

**Alan Byrom:** They're not vague. You see, this is what the board and you have been arguing for 13 years, that there's something wrong with this legislation; and what it does in this report it says "Section 37(a) could be confusing." They're saying the legislation is confused; but in fact, the reason why it's confusing is because they haven't based their policy on 37(a), they've based it on 36(2). They've based it on the wrong authority in the Act. No wonder it's confusing. They want you to think it's confusing, but it isn't. It's very simple.

**Michael Travill:** So, for this issue, essentially you believe that there should be no change in the legislation?

**Alan Byrom:** Right.

**Michael Travill:** What should occur – and we talk about it later in this document, as well – is that there should be a quicker or more easily accessible ability to challenge a policy that comes back that, in your opinion, isn't in keeping with the legislation? Is that where you were going?

**Alan Byrom:** Yes; the alternative is finally, you could amend the definition to make it clear that it is referring to Section 37(a), because even though it is clear because "average weekly earnings" is in quotation marks – which means it's a quote – and "average weekly earnings" is the header of 37(a), you have to make it clear that the period of time we're now talking about is the one in your imagination. If you think about it, if you think about "fair" and you think about this interpretation, the board has the discretion to determine the period of time. Why not go back to the day a guy was born? Well, that's not fair, but heh, what is fair? What is truth? Let's wash our hands.

**Michael Travill:** That's what I'm saying, all we can do is look at amending the legislation. So, we've heard the two suggestions, –

**Alan Byrom:** Right.

**Michael Travill:** – amend the legislation to reflect that it points directly at 37(a).

**Alan Byrom:** Yes.

**Michael Travill:** And/or amend the other process to get parts where it's in dispute to a third party decision maker like a judge –

**Alan Byrom:** Yes.

**Michael Travill:** – in a quicker and more expedient manner.

**Alan Byrom:** I just want to tell you something very briefly, a little story.

**Chair Patrick Rouble:** Sir, you did point out that we are very constrained for time today.

**Alan Byrom:** Okay, good, I'll give it up. Thanks.

**Chair Patrick Rouble:** Are there other issues, other concerns? If not, we'll come back.

(No audible response)

**Chair Patrick Rouble:** It looks like you've got the floor.

**Alan Byrom:** What happened was that the legislators in the Justice Building changed the definition. The definition used to read "Average weekly earnings to be calculated from such sources of earnings over such period of time as the board considers fair and just."

So, they changed it to "any sources of earnings and any period of time."

So, I went up there and met the head legislator. I said, "You changed this."

He said, "Yes, that's no problem."

I said, "No?"

He said, "No."

I said, "The word 'such' means 'the same as'."

"Does it," he said.

I said, "Yes."

He said, "I don't think so."

I said, "Well, maybe we should compare your personal opinion of the word 'such' with the Oxford English Dictionary."

He said, "Oh, no."

I said, "Okay, look, this definition is related to 37(a), right?"

He said, "Yes."

I said, "The period of time we're talking about is immediately before, right?"

He said, "Yes, right. That's it, yes." He said, "Look, changing this word in the definition does not change the law or the Act."

I thought about this, and then, I agreed with him. I phoned him up, and I said, "I agree with you."

Now, the word 'such' is definite, and it refers to something previously specified. So, when the Act definition read "such period of time," it was referring to a definite period of time previously specified, 37(a), immediately before.

So, even though they changed it to "any", which is indefinite and unspecified, it doesn't make any difference, because it's the same period of time as 37(a), the one determined by the Act. So, he's telling me that this definition is not the law. That's the whole point: They based their policy not on the law but on a fragment of a sentence in the definition; then tried to say it's related to 36(2), manner and method of making a payment. It's not really a problem with English or the language; it's an attitude about who is in control and what they think is too much and what they think is fair and not understanding. Like you said, there's a confusion.

So, you can change the definition, but it doesn't change the law. So, as long as the law remains the same, whatever their fair judgment is, it can always be challenged. So, on that basis, although you could make it clear to these people, you don't really have to change it, because it's the law that counts. So, they can fool around with a dictionary all they want, they can fool around with the legislation; but they can't fool with the law. The fact that they did it for 13 years means we don't have a track record of what 75 percent of gross is really like when it works, and it is affordable.

So, all I was commenting on in the review process is we don't have the research and the resources of how it works. What we've got is a document that's trying to tell us that it's too much, not fair. End of comment.

**Chair Patrick Rouble:** Would anyone else like to share a comment?

**Rob King:** It's not on the same issue, but it is on this Act review. I'm a little bit curious: Going through the Act review discussion paper, I

didn't see any – there might be some – comments from people, saying, “Well, in Saskatchewan they do it this way or in Newfoundland they do it this way.” Our Act review basically, what they've done is just gone through every Act across the country – they even mention Australia in here and wherever else – and did a comparison. So, all this is is a comparison of other Acts. I find that kind of disturbing in this Act review discussion paper, “Well, we should compare it to Australia.” I think this Act review is a misnomer. All it is is a comparison to other Acts. It's kind of under my skin.

**Michael Travill:** Was there background information that you felt that you were missing? We have an explanation of what it is about. Then we say, “Look, this is how some other people do it.” Then we wanted to hear what you think, was there something that we missed? You know, if we didn't provide what others do, then how would people be able to see what else was done in another jurisdiction or elsewhere?

**Rob King:** Well, if our Act wasn't working, perhaps that would be necessary, but I feel that the Act is working, is effective. You know, you've got less people on benefits. You've got less injuries than even five years ago, even more recently than that. You've got less claimants. So, you've got less injuries, less claimants. The board is in the black. I mean, it's working. We don't need to compare it to other jurisdictions. Each jurisdiction is separate anyway. So, we're not combining a national *WCB Act*.

**Michael Travill:** It's just that people brought these issues to us. So, we had to put out as much information to help illuminate the issue, but we're more than happy to take the recommendation, “No change to that part of the legislation.”

**Rob King:** Well, yes, the Act is written for Yukoners, for our economy. Our economy, they call it “seasonal”, and it was developed around seasonal workers. You talk about bringing in Ontario and New Brunswick and that or wherever else, I mean it's not seasonal down there, as it is up here where a high percentage of the workforce up here is seasonal; and that has to be remembered. When this Act is being rewritten, we're not B.C. here. We're the Yukon where most of the workers are seasonal.

**Chair Patrick Rouble:** And that's the purpose of this review is to have Yukoners review the current legislation and identify any changes that could be made that would provide a better solution to Yukon employers or Yukon workers or Yukon's injured workers. And we have been told that there were 21 different issues that people were concerned about, and now we need to hear from you some of the specifics about, “Do you think that section is working okay right now; and if so, please don't change the legislation.” So, we know we're dealing with a very broad topic, but we're trying to bring some focus to it. We have the 21 different issues on the table today, and we would like to hear some specifics from

you folks as to, "Heh, I think this is fine the way it is" or "No, I don't agree. It should be changed in order to accomplish this."

And you can either tell us that today in an open forum or in a written submission.

**Rob King:** Fine. In your preamble in one of your documents you put out – I think somewhere near the start of this whole process – you mentioned that it's got to be a give-and-take thing, this is a give-and-take process. Well, I don't see a lot of giving in this whole benefits section. It's all taking: Taking our benefits from 75 percent of gross to 80 percent of net. That would take away a percentage of this annuity, which is this pension; because if you're reducing the benefits, you reducing this annuity, also. That's just too simple. I mean, it's more taking than it is giving. I don't see what you're giving in this.

Another issue here is that you guys spent a lot of time with this 80 percent of net business here. Did you actually do a calculation, based on someone earning 40,000 a year, and put it through and come up with a bottom figure what they would receive as a benefit?

**Chair Patrick Rouble:** There are various different scenarios that we would look at for that.

**Rob King:** I disagree.

**Chair Patrick Rouble:** One other point I want to put out, though, is this document doesn't include any conclusions. It includes options and options for discussion, and the panel is the one that's tasked with drawing conclusions as to how to address this. So, what we would like to hear from you folks is: "Go in this direction or examine this more closely or, heh, this is not an issue that should be addressed through changes to the current legislation."

Do issues like that require further examination? Certainly they do, and not just on one specific income amount but across the board and looking at how that would impact on the various folks receiving benefits.

**Rob King:** Okay, well, did the board or the panel do a calculation or they didn't to see what the difference would be for someone making 40,000 a year, 75 percent of gross, as compared to someone making 40,000 a year, 80 percent of net?

**Michael Travill:** What we did when we did some research into it, the problem you run into is there are a huge number of variables, even with 40,000; because if you're looking at switching from gross to net, there are many different concerns. Are you going to use exact tax tables? Say I have four kids,

when you're calculating my income, it's different than somebody with no dependents; and then, the taxation rates, based on that. All of those things we took into consideration. We got some background information, and then, when we put it in the book, we highlighted that there are some places where it's more beneficial to the lower income worker and more harmful to the higher income; but in the grand scheme of things, when we put it in our background information, to the entire fund overall, it makes relatively no difference. It's an optics thing, but it doesn't actually generate more money or less money for the fund. That's a generalized statement. So, we did do those generalized statements. To work out a scale of different incomes is a large venture and –

**Rob King:** It's not.

**Michael Travill:** – we wanted to hear from the stakeholders whether there was enough initiative to move down that road to look at switching over to a net before we undertook that. That's a large move to go down that road.

**Rob King:** I disagree with that, because you could go to H & R Block and hire them for an hour – whatever they charge – and say “Here, I want a couple of calculations, simple, based on 30,000, based on 60,000, based on 90,000”, just do it, just base the deductions and just do it.

**Michael Travill:** So, is that it, then?

**Rob King:** It's so abstract right now, 80 percent of net. Well, what's the bottom line here? That hasn't been done here, and I find that really disturbing. Nobody knows. You're just saying, “Well, let's go 80 percent net.” What is it going to mean at the end?

One of the things it does mean is that person's pension or his annuity is going to be reduced, also. So, it's a blow to the left side of the head and to the right side of the head, because you reduce his benefits; and also, when you do that, it is going to reduce his pension. So, that's a very big step to take. It really is harmful for the client, for the injured worker, who has it tough enough already. I mean, I myself, it's no fun being a draw on the system! For crying out loud, I'd much rather be working; but you can't work because of your injury. It's really not fun. You know, rather than trying to kick a guy when they're down by reducing the benefits by what you're doing or is being suggested here ... I think you're going the wrong way, you're going to create poverty in the Yukon here.

That's enough. I'm finished.

**Alan Byrom:** Issue #15, Section 6, this section deals with the people who supplement their income by food gathering; and if they can't do that any more because of the injury, the question is: Should they receive some

form of financial compensation for that? The review says: Well, it's difficult to provide benefits, because no premiums are collected to insure this work; but if you average a workers' earnings over 12 months, you're taking insured premiums and spreading it over berrypicking time. So, that's a contradiction, and that's a problem; because the board is using – in their period of time – a period of time when the worker is not insured, when he's not a worker, when he's unemployed, and those times have no value. So, the review is saying that berrypicking time has no value, because it's not insured, but when they average it, they're using and spreading insured earnings over that period of time.

So, if you're going to think about averaging in the new legislation, you have to deal with those complexities of retroactive insured premiums going into periods of unemployment. I don't have a solution for that, other than paying that 75 percent gross across the board for everybody. A lot of people don't understand the deeming process or even the calculation. A very brief example is you make \$600 a week. You get hurt. They give you 75 percent of that. Then they find out you can't go back to your old job because of your permanent impairment. So, they say, "This is the deeming. With your talents and skills, you could get a job that pays \$300 a week." So, they give you the difference between 75 percent of 600 and the 300. So, let's say they give you \$250 a week. So, that \$250 a week is the 75 percent of your earnings. It's now 250, so it's been reduced by – whatever it is – 60 percent, 40 percent. So, the idea is that you actually can't get that job as a gas jockey. It's not available. So, you've been deemed capable of getting it, you could get it; but it's not there, and you can't do your old job. So, you have to survive on that portion of the \$250 a week, and you can just do it. But if you average that, it's zero. So, people have to understand what "deeming" means. When they deem you capable of a job, that 20,000 is taken off your 75 percent earnings. So, it's no longer 40,000; it's 20,000. So, it's no longer 20,000; it's 10,000. That's what you're getting. So, the whole process of the 75 percent of earnings and the deeming is that you end up possibly with enough to live on even if you can't find a job.

**Michael Travill:** Yes, just by way of calculation, when they select a job – say they select a job for 20,000, –

**Alan Byrom:** Yes.

**Michael Travill:** – before they do the deduction, they take 75 percent of that. So, it's apples-to-apples, right?

**Alan Byrom:** Right.

**Michael Travill:** So, it's 75 percent pre-accident, 75 percent ...

**Alan Byrom:** So, just finally to sum that up, that deeming process, the averaging process ... Sorry, I forgot what I was going to say. I'll have to think about it again. It had to do with the unemployment.

**Chair Patrick Rouble:** On this specific issue of earnings and including some way of addressing the household expense reduction activities that people do, one of the options put forward was amend the legislation to allow workers to carry out household expense reduction activities to purchase optional coverage in the amount that they themselves would justify. Any thoughts or opinions on that option?

**Alan Byrom:** Okay, the thought on that is a lot of small-time employers – because of the nature of Workers' Comp – they take out private insurance so that when they get injured, they don't get \$14,000 from Workers' Compensation. They get half a million dollars, or they get 40,000. The employer themselves takes out private insurance for themselves. So, if you're suggesting optional coverage, the employer himself could have an optional insurance for the worker. That's the thought, as a matter of fact, that I was grappling with. For example, somebody who is working at Keno Hill, they're insured by Workers' Comp, but the company had an insurance plan, as well. So, when the worker got hurt, initially they got money from Workers' Comp, and Workers' Comp said, "Well, you've also got this company insurance." So, they took the person off comp, and they went on the company insurance, and then, the company insurance said, "Hit the road." Finally she had to get a lawyer to actually get her Workers' Comp, which had been denied on the basis that if she wanted to, she could find a husband who would help her out financially.

So, some companies did that, they had Workers' Comp and private insurance for their workers; and it's possible that that private insurance is related to if you're working in a camp, are you insured 24 hours a day or just for eight hours of the day? So, I went over a cliff in a truck at Keno Hill in '68, a place called "Suicide Bend" in the evening. I went into the hospital, and they gave me the comp; but I think it was their private insurance, but I got compensation, and it was in the evening, coming back from the bar. So, I go insured for that. I was paid for that. So, that private insurance of the company could be a 24-hour thing.

**Michael Travill:** Compensation is usually complex. There are things about cash and workers, whether you're under the care and direction of the employer at the time, all of those things. So, those are difficult situations, but once a person is injured, they are then assessed, based on the rules and regulations and the legislation that the compensation has.

Another thing is when an employer buys optional coverage, say I run a small store and I buy optional coverage for – I have to set the amount – say I pick \$60,000 that I'm buying optional coverage for. I get hurt while I'm working at the store. I have to prove, just the same way, and I have to establish my pre-

accident earnings, just the exact same way as any other worker; and if my pre-accident earnings are only \$14,000, that's all I get my compensation on, despite having paid the assessments on 60,000. I have to establish, the same way as any other worker, what I earn.

So, once an employer who is under optional coverage gets hurt, he's treated exactly the same as any worker. So, there are no windfalls, there are not two sub-types of people or anything like that.

**Alan Byrom:** I thought the insurance coverage for private was –

**Michael Travill:** No.

**Alan Byrom:** – that they buy the insurance, they buy the amount of coverage.

**Michael Travill:** But they still have to establish how much they earn.

**Alan Byrom:** Oh, yes, no problem.

**Michael Travill:** So, they establish it, under CL-35, just like everybody else!

**Alan Byrom:** No, you mean the insurance companies do?

**Michael Travill:** Oh, no, sorry, with compensation.

**Alan Byrom:** No, I'm talking about insurance; when you go to a private insurance company and you insure yourself for 60 grand. We're talking about contracts, as well.

**Michael Travill:** We can't do anything about the private insurance.

**Alan Byrom:** That's right. That's what I'm saying, though, that's the option. These are employers. They have to pay Workers' Comp for their workers; but they take out private insurance for themselves, because the Workers' Comp thing isn't good for employers. It's not the same. That's what you were saying; but according to contractors, if you look at the legislation, those contractors are under something else – as far as I know – in terms of the amount of money that they get, I believe. I may be wrong.

**Chair Patrick Rouble:** Folks, why don't we take a 15-minute coffee break.

(The meeting adjourned at 10:15 a.m.)

(The meeting resumed at 10:30 a.m.)

**Chair Patrick Rouble:** Okay, folks, the topic for today's meeting was to discuss the benefit issues, the 21 different issues that have been slotted into this category. We certainly recognize the overlap – we've had a bit of a discussion about deeming – because there are inter-relationships between all of these issues and especially how they affect the benefit issue.

We have heard some comments today specifically about issues 13, 14 and 15; and we have another 18 issues that were identified. Are there additional comments that people would like to make about some of the other issues that were raised.

(No audible response)

**Chair Patrick Rouble:** In the afternoon meeting with the Stakeholder Advisory Group, we found that the structure there worked well to go through it issue-by-issue. We did hear comments, though, that folks didn't want to do that in this type of a forum, because they didn't know when the different issues would come up, and people didn't want to hear every comment on every issue. They only wanted to speak to specific issues. So, it was suggested to us that we keep it more free-form; but like we have said in the past, we are willing to change how we go through these things if it would benefit how you folks contribute your comments.

**Alan Byrom:** Well, we could look at #17, which follows all those ones I commented on.

**Chair Patrick Rouble:** Was there a specific ...

**Alan Byrom:** Well, one comment I wanted to make is that because I think in either 12 or 13, it said that this 75 percent of earnings that currently we are supposed to get is good for high-income earners but not good for low-income earners, I'm not really sure what they mean by that; but what I wanted to say was what you have to be careful is this idea of the bottom line, of raising the bottom line to accommodate low-income workers who stand very little chance of getting injured and lowering the bar for the workers who take big risks and get big money to take those risks. So, what happens for instance, on the CL-35 policy, they rationalized it by saying, "This could help a helicopter pilot who got a job in the off-season at Tim Horton's, fell through the window and ended up in a wheelchair and would get 75 percent of \$7.00 an hour for the rest of his life.

Now, the fact is there are no helicopter pilots in wheelchairs who worked at Tim Horton's, but by doing it, those workers who got averaged ended up on

welfare. So, they were trying to say, “This is going to help low-income ,” but in fact ...

So, you have to think about minimum compensation also in relation to those high risk industries that pay big money because you’re risking your life. That’s the comment really, “Be careful of not creating a bottom line for the low-risk workers whose chance of getting injured is zero and lowering it for those guys who are up there, risking their life.” That’s the comment on that.

**Joe Radwanski:** Yes, just a general comment on the Act. I found that the Act itself is pretty fair if taken at face value. The problem arises when the policies are developed and the spin that administration puts on those policies, which aren’t necessarily a true interpretation of the Act. I have just finished five years on the appeal tribunal, and most appeals are won because the appellant comes to the appeal tribunal and says, “This is not what the Act says. This is how administrators interpret the Act,” and they have won their appeal on that basis. So, that’s pretty good evidence.

To illustrate that, I attended a training seminar put on by the board for new members of either the board or the appeal tribunal, and it was to do with policy. And the lady put it on, and granted, she was new, but she was half an hour into her dissertation before I had to remind her that the Act is paramount, that the policies are developed from the Act, and they have to adhere to the Act. And she agreed with me, but that point hadn’t been brought up during that time period, which tells me that the policies were more heavily relied on by the board and administration than the Act itself. So, any Act changes are either going to have to be very specific, which is going to lead to a lot of problems; or else the board has to start interpreting the Act the way it was meant to be.

**Chair Patrick Rouble:** Thank you.

**Rob King:** I’m talking about issue 1, age limitation of claimants. This talks about life expectancy and retirement age of age 65, and it talks a bit about overpaying people if they pay pass 65. It is my understanding that Ontario just raised their retirement age to 67, is that correct? Did you hear about that?

**Michael Travill:** The province did, yes.

**Rob King:** Yes, so in the last paragraph here: “would have retired upon reaching the 65<sup>th</sup> birthday – the standard retirement age,” that’s been thrown out the window, because it’s not a standard any more because Ontario just raised it to 67. So, that wording should be looked at. So, just to make a note of that, 67 is now the retirement age in Ontario, and I’m sure other provinces will start moving that way, too. That’s all I have to say about that issue.

If we can talk about issue 4: benefits during appeal period, it specifically talks about the appeal process, and this is going to relate also to the time limitation to file an appeal. Now, I just got back a decision from the hearing officer – this is the first level of appeal. I filed it on the 2<sup>nd</sup> day of October, and I just got it back March 8<sup>th</sup>. That's just with the hearing officer, so that's, what, five months?

Now, if I want to appeal that, which I am going to, it's going to go to the appeal tribunal. So, what's that, another five months to get a decision back from them? Total to go through the system, there's 10 months to get an answer.

So, my concern about this limiting the time for appeals, you have to clean up the whole system. You have to clean up your appeal process; because if I have to wait five months for a decision from the hearing officer, that cuts into my appeal time. So, it's got to be refined so that it's not a burden on the claimant, on his time. So, after he files an appeal, now we're talking about on his time, because there's a limitation, there's a window; and that has to be taken into account with the length of the appeal time that is being talked about here, a window for an appeal. Well, if you're going to put a window on it, you'd better look at extending it because of the way the process is right now.

**Michael Travill:** The board just passed a board order where if you file an appeal today – if the employer is involved – you cannot have a hearing until seven months have expired. You have to wait seven months after the hearing officer –

**Rob King:** The board just filed a motion?

**Michael Travill:** No, past a board order reflecting that.

**Rob King:** What's the purpose of that? So, then, how can we have a limit on the appeal process, a time limit for appeals? You've got to really look carefully at that issue. That's not this issue here, "benefits during appeal period". It would be – I don't know what number it is – but it's time limit for appeal. I don't know exactly where that is. Wow, seven months!

So, just to bring that to your attention, if a person is filing an appeal, all of a sudden it's out of his hands. They've done their job, and now the board takes whatever time they want to. If they want, they can just laze around and look at it whenever they bloody well feel like it and just get an answer back in seven months. That's been my observation in talking to other workers that that's what happens. They take the maximum amount of time, as does the appeal tribunal, also.

Well, that's actually issue 5, here it is, the next issue, limitation periods.

Issue 4 is benefits during appeal period, but it also talks about the appeal time, how long it takes for a decision. So, issue 5 is limitation periods. So, you've certainly got to consider that when you're considering how long the appeal is in the system.

**Alan Byrom:** I think, as I was saying earlier – maybe – that you have to understand how the legislation works, and then, how it's been mismanaged to understand. So, this business is like the appeals times.

So, this one where it says "In the U.S. they've got this situation – issue number 4, sixth paragraph:

"A solution that is used in some systems in the U.S. for untimely initial adjudication of claims is a requirement to initiate benefit payments - without prejudice - if a decision has not been made within a legislatively defined period."

So, what used to happen and what does happen is you file, your claim gets rejected. So, you don't get the appeal decision for two years; and when it's in your favour, because you couldn't get a job because of your injury, they had to back-pay you full compensation. Then they have to rehabilitate you. So, that drives up the claims cost; because if they had done it right, they could have adjudicated the claim, made compensation, got you rehabilitated and ready for another job in three months, and then, you'd be living on your deemed rates instead of the full comp retroactively for two years. So, that's another reason why they came up with the averaging policy when they realized that with an advocate and an independent legal advisor, people were going to win their claims, they're going to get paid back, the claims costs are going to go through the roof. So, they started doing the averaging retroactively on that 97 application, et cetera.

What I'm saying is if they do have to pay, then they're going to get that appeal process tightened up, because they're always banking on "you're going to go away, you're not going to win." So, they will spend large amounts of money, trying to stop you from getting your claim; but when you do get it, they have to spend large amounts of money paying you back. So, they tripled the cost of the claim.

So, any kind of financial process where they have to pay you that ensure that they're going to deal with it properly, that can work to limit the time they spend dealing with your case. If you put the financial screw on them, they're going to deal with it faster. So, the U.S. thing could be a good idea. That's why they came up with this, because they're messing with the claims. They say, "Right, you're going to have to pay these guys while they're waiting." That was the solution to the problem of waiting, because the whole issue is the timely and effective management of the claim, and that's what reduces the claim costs. So,

if you can get them to reduce that appealing time process by making it a financial issue, there's a good likelihood that they will do it and the worker is getting something he can live on.

**Rob King:** Yes, I just want to catch a bit more about this seven-month period that Mike mentioned.

**Michael Travill:** Well, I'll talk to you about it after. It's a new policy or a new board order.

**Chair Patrick Rouble:** Just to reiterate: We're not the board, and we can't answer for board decisions or –

**Rob King:** I'm not asking for a decision. I'm just asking about what this order says.

**Michael Travill:** It's the hearing officers rules of procedure; and as they go through, the times that they associate with each action before they get to the appeal, if you add them up, it's 30 days here, 60 days here, 30 days there, 90 days there. It becomes seven months before you can actually have a hearing.

**Chair Patrick Rouble:** I can appreciate wanting to share the information that we, as individuals, know; but I've got to stop you there, Mike, because we're not the board, and we can't tell you what their policy is. We know, but we can't speak for them. So, if there are specific questions about their specific policies, we'll need to find a different venue to get those answered, rather than having us do it off the top of our head.

**Rob King:** Well, all I'm asking about is what it said. I'm not doing an analysis of it. I just want to ask Mike what it said. I don't think he's going too far. I don't think I'm going too far either.

**Chair Patrick Rouble:** So far we've had a bit of a discussion now about issue 1, and then, number 4. Are there any comments about issue 2 or issue 3? I would just like to interject a little bit of structure here. We've got an hour left, and I wanted to ensure that we have an opportunity to get your comments on all of the issues if there are any. And again, I'll remind folks that the panel would appreciate receiving your written comments if you feel more comfortable in making them in that manner. That gives an opportunity to participate in this kind of a forum and mull things over a little bit.

Also, the option of "no change to the legislation," if that's what you feel, then that's what we would like to hear, as well.

**Alan Byrom:** On issue number 5, limitation periods, some

work-related disabilities, they start when you're 20, and they manifest when you're 40, like asbestosis. So, there are some cases where a 12-month limitation is not fair in relation to things like that. So, I don't know how they adjudicate that, if somebody is on a job not related to asbestos and he comes down with asbestosis from a job that happened 15 years ago.

So, the issue of time limitation periods should be relative to the nature of the problem. In other words, if you break your finger, and then, apply for comp 16 months later, 12 months after it's been fixed, obviously that's a bit out of line; but if it's something like asbestos, which is a lifetime problem ...

The other side of that limitation is if the worker dies from that, after he retires, how do you compensate the spouse? That's another issue to think about around that limitation.

So, I'm saying the limitation has to be relative to the nature of the injury, the nature of the problem. Long-range developments have to have a different kind of consideration, because you have been insured on that particular job, even though it's 15 years ago that you were insured.

**Chair Patrick Rouble:** Thank you, issue number 6.

**Rob King:** I have got issues with number 6. The first paragraph states, the second sentence:

“However, Board policy CL-53 passed on March 29th, 2005 does provide that for claims prior to 1992, a worker can apply for a lump sum payment of the periodic payment of benefits where the disability is less than 10% and the worker meets certain criteria set out in the policy.”

Well, a lump sum payment of periodic payments is actually Section 32 of the Act, and the policy did not provide for a lump sum payment. It's in the Act. Section 32 is lump sum payment. So, I think that's very confusing, and it's misleading. It's not the policy that allows for lump sum payment; it's the Act that allows for it. The policy just provides guidelines as to what must be met to get the lump sum payment or what criteria the worker has to meet to get the lump sum payment. So, that's false information.

**Chair Patrick Rouble:** Is there any change that you would like to see to the legislation, though?

**Rob King:** To the legislation?

**Chair Patrick Rouble:** Yes.

**Michael Travill:** The issue.

**Rob King:** Well, I think the idea of commuting small amounts is fine. That happens in jurisdictions for a small disability. Rather than a person receiving a cheque once a month for \$53 until he's 65 or whatever, just commute it, and then, it's not going to be a burden on the fund. As a matter of fact, it will probably be nice to get rid of it, get it off your books sort of thing, rather than having to take the time to keep this person on the list for a cheque every two weeks or a cheque every month, mailing it out and writing it up, et cetera. So, I agree with that suggestion. It's paragraph 7:

“Commutation of small amounts makes good sense for both the board and the worker.”

That's about all I have to say about that one.

**Alan Byrom:** I just want to mention two things here: Sometimes the lump sum payout is really a positive in the sense that if the worker has got a permanent impairment, you give him the lump sum, and he uses it and creates a successful business. That happens. There is somebody in Whitehorse that that happened to in Ontario, a very successful business, and he's doing it.

But I was thinking that this could be an issue that could be associated with the deeming process. Relative to age, you could have a minimum deeming that comes under the heading of “self-determination”. So, you get workers who are older workers, they're 55, they've got limited education, they can't go back to the job that they were doing, the board doesn't want to send them to university for five years. They've got these aptitudes. So, what they do is they give a minimum deem in the sense that they say, “Okay, we will deem you for a part-time job where you could make this much.” So, you get the difference. So, the benefit that you're getting is reasonable for you to survive on, but it allows you to pursue your own educational development through what's available in the community, like the college. So, instead of the board paying for your rehabilitation, they leave it up to you, and they leave it up to you to figure out what it is you're going to do; and because of the minimum deemed, you're able to survive on that money. So, this is for workers who are older, they're not going to be able to get a job, very limited possibilities, they're not going to get another education, that kind of thing. So, in certain circumstances like that, a lump sum payout could be the answer. So, if you made it part of the deeming process where it was a discretion that the board – fair and just – for a minimum deemed that could include a payout.

This could also work for workers who have been on comp for a long time. Like, I'm 61. So, there are four years left of this deeming sum. In two years' time, if my health deteriorates and the problem gets worse or whatever, I might

want to say, "Look, I want to go back to where I came from. I can survive better there. How about giving me the next two years upfront. See you later." That's feasible. That's a possibility. So, not a lump sum payout right away. If somebody is going to be on comp for 30 years, he's got \$750,000; but for a guy who's 62 or 61, what's the next three years in advance?

So, what I'm saying is it does work in some instances. He creates a successful business, which he wouldn't be able to do on the ordinary payout, because he has to invest in tools and everything else. And it could be oriented also in the deeming process for a minimum deemed for all the workers with limited possibility of employment under something called "self-determination". Self-determination, minimum deemed, with the discretion to give him a lump sum; because if he's 55 or 60, it's not going to be a massive amount of money.

**Chair Patrick Rouble:** Any other comments?

**Rob King:** Issue 6 again, commuting benefit payments, it's not even in the Act, the present Act. It was passed after that, so if you want to go anywhere with this, you're going to have to add it to the Act, because it's not in the Act. It's not modifying what's there. It's adding a new section. Yes, I think it would be a good thing for a person, because they don't need the harassment of WCB of getting their cheque every month. It plays on their mind. They don't need that. Just come to an agreement, an understanding, of what it works out to until you're 65 or whatever, until the end of your allowed benefits time and give that person that cheque.

**Alan Byrom:** Briefly, it looks like what I was saying is option number 2.

**Chair Patrick Rouble:** Thanks. Are we ready to move on to issue number 7? Any comments on that?

**Rob King:** Yes, did you check with other jurisdictions? Do they have awards for pain and suffering? It's not mentioned in here.

**Chair Patrick Rouble:** Would you like us to look and do another comparison with other jurisdictions or remain true with looking at what is unique in the Yukon context?

**Rob King:** Well, I think that seems to be done all the way through this whole Act review. That might not be a bad suggestion.

**Chair Patrick Rouble:** The panel is not aware of any other jurisdiction that has an award for something like this.

**Alan Byrom:** I was thinking that this is another element that

could be part of the deeming; because although you're deemed to be capable of doing a certain job, you've actually got this pain and suffering thing, which is there all the time that you can actually work. So, it limits your ability. A part-time job is more suitable for somebody who's in that kind of condition. So, if you do the deeming properly, you could use it also to compensate the pain and suffering aspect of the problem.

The other is we've got this dual system where you've got the wage loss benefit, and then, impairment award. Your impairment award is going to be tricky; because although it's the American Medical Association Guidelines, you don't always get it because you're getting the wage loss benefit; and even in the sense if it's something minimal – in other words, the American Medical Association Guidelines aren't always strictly applied. So, you can have an impairment and they look at the guidelines and say, "You don't actually have an impairment," even though you've got the pain that goes with it. Even though you've got the pain that goes with it and even though you've got the limitation, there is something in those AMA Guidelines specifically in percentages or measurements that you don't have impairment. But actually, you're getting benefits for an impairment. So, what they have done is they've not taken into account what you can't do any more. So, you can't do normal activities. You can't climb ladders. You can't do this, that and the other thing; but the percentages and the fractions of the x-rays say more or less that you don't fit the guidelines. But they haven't taken into account what it is you can't do normally. So, you don't get an impairment award; and because it's only going to be a couple of grand, you say, "Okay, forget it. I'll wait until things get a lot worse."

So, those two systems are there, but it's not always satisfactory. So, the inclusion of that pain and suffering in relation to the deeming, what we need to improve is how those AMA Guidelines are dealt with. We need to find the AMA Guideline that would include that as part of the impairment of what is normal for you to make sure that when the medical assessment is made that AMA Guideline is referred to.

**Chair Patrick Rouble:** Thank you. Any comments or thoughts on issue number 8?

**Rob King:** Yes, I have comments here. Now, the way this is written here, it just makes it sound like Yukon workers are paid a million dollars if they get hurt. I don't see a massive influx of workers to the Yukon to jump on the WCB bandwagon if they get hurt. This is a real spin on this. You talk about the Yukon as being vastly superior to other places. Well, the cost of living up here is vastly superior to Manitoba, vastly higher than Manitoba. That's not mentioned in here. You don't say "The cost of living up here is this much. In Manitoba it is this much." But you do say it's 30 percent higher here than Manitoba. I think that's kind of a spin put on things here to make it look like these

guys are just getting hurt and walking away with a Jaguar. So, I think the status quo, what is here right now, is working; and you should leave it, I guess.

One comment I do have is it talks about indexing the non-economic loss award. It's on the next page there, the indexing formula. I think you've got to clarify it. It says:

“For example, increase the base by the annual Canadian CPI less 1% ...”

Well, the board, in their money-wise ways, happens to use the CPI value, which is less than – I don't know what it's called. There are two CPI values, and the board uses the smallest one. The CPI they use is based on just eight or 10 or 11 necessities, whereas the main CPI is based on the whole gamut of things here. So, that has to be clarified in the Act that if you're going to use the Canadian CPI, use the one that goes through everything; because the other CPI that you're using here doesn't include things like fuel, et cetera. If you look at what it includes, it only includes 11 objects, whereas the other CPI includes, like, 22 things. So, you can't just say “the annual Canadian CPI less 1%”, because you mention the CPI list. You've got to be specific. This Act is about specified things, so you've got to be really specific. You could start by doing that. That's all I have to say.

**Chair Patrick Rouble:** Thank you. Any other comments about 8, or are we ready to move on to issue number 9?

**Rob King:** Oh, it's called “core CPI”, sorry. There are two CPI's. The core is just like the eight things, like, food, shelter, et cetera.

**Chair Patrick Rouble:** Thank you. Any issues or comments or concerns regarding issue 9?

**Alan Byrom:** What I just wanted to comment on here is: Section 35 of the Act provides that:

“If a worker has suffered a work related disability and is entitled to wage loss compensation pursuant to Section 36 ...”

It's 37(a). 37(a) says you have work-related lost work earnings, but the policy of wage loss calculation is 37(a).

**Chair Patrick Rouble:** So, with regard to the amount, is there any discussion about that?

**Alan Byrom:** I just thought I'd make that little comment there.

**Chair Patrick Rouble:** I appreciate that.

**Alan Byrom:** I think there are cases where when a worker is in an injury, the damage includes property and personal belongings, as well. You know, the trailer they're in blows up. They get bodily damage, and they're laying outside, and all they've got left is their underwear. Now, in some instances, the employer is supposed to do that; but of course, they don't. They say, "Okay, we'll buy you some new underwear," and that's the end of it. I don't know if this covers people who are not getting their comp, going through the appeal process, and they end up losing property because of that. I don't know if that's part of that loss, damage? No?

**Chair Patrick Rouble:** No, that's the next point.

**Michael Travill:** This one, number 9, is if you break your foot, go to the hospital and the doctor cuts off your boots. Currently, your boot would be covered up to \$200, and is \$200 enough?

**Alan Byrom:** So, that's a problem between the employer and the Comp when it comes to the example of being blown up in a building that you're in where you're in a camp and the property is part of the body damage, of what you're losing.

**Joe Radwanski:** We all know that \$200 doesn't buy a lot now-a-days. This refers to, what, 1992 changes. The situation in Watson Lake where the trailer did blow up, there were workers who lost T.V.s, ghetto blasters, eight or 10 changes of clothing, work boots and so forth. Some of them lost thousands, and \$200 just doesn't cover it basically.

**Rob King:** I don't know what the board pays out in personal property, but I don't think it's a real big budget item. So, as a result maybe you should be looking at increasing the amount that is paid out to people who lose property, because I'm sure it's not breaking the board in what they're paying right now. There are only a certain number of industries where you have personal property damages. So, this could be increased for sure.

**Chair Patrick Rouble:** The next issue, issue number 10, also looks at the loss of personal property and the trigger for that. Any comments on issue 10 or further discussion?

(No audible response)

**Chair Patrick Rouble:** Can we move on to issue number 11, then.

(No audible response)

**Chair Patrick Rouble:** We'll move on to issue number 12, then.

(No audible response)

**Chair Patrick Rouble:** We have had some discussions about Issues 13, 14 and 15. So, we'll move on to 16.

**Rob King:** What happened to 12?

**Chair Patrick Rouble:** Sorry, Mr. King, were there any comments that you would like to share on issue number 12 or anyone else?

**Rob King:** Sure, yes, I will. I don't think claims costs have been studied well enough by the board. I mean, in this paper, they say that "Reducing benefits is the simplest way to reduce claims costs." Well, I don't think a study has been done to show how much mismanagement of claims is costing the board. A good example, you know, what are employers saying about the board taking – I'm going to mention names, because it was in the paper – Fred Edzerza to court. And the judge said, in the Supreme Court – it had to go through the Appeal Tribunal and the whole gamut – the judge said, "This shouldn't even be in front of me. There was no policy violated." Why are employers getting down WCB's back about this. They should be saying, "Heh, that's driving up the claims costs here to take this guy to court when it shouldn't even be in court." I think claims costs, things like that, are driving up the claims costs a fair bit. There have been a number of cases going to court here in the last couple of years, and it's not a cheap alternative to administering fair and just compensation.

So, I think claims costs have to be studied a bit more as to what it's actually costing them and how they can reduce their claims costs by providing a little better management of their own system.

Yes, an example would be a worker that gets denied benefits for his injury – and this is actually a true case – and the worker says, "Look, I've found an occupation that I would to study if I can do it; and if you guys pay to train for that, I'd like to train for that, and I'll be out of your books."

WCB says, "No." The workers injury gets worse, and now he's on full-time benefits until he's 65, just because of simple mismanagement. So, claims costs have a lot to do with mismanagement of claims files. That's all I have to say.

**Chair Patrick Rouble:** Thank you. Any other comments?

(No audible response)

**Chair Patrick Rouble:** Shall we move ahead, then, to 16?

**Alan Byrom:** First of all, really this is what I've been talking about all along. I just want to point this out. It says:

"The Yukon policy does not appear to be out of step with that in other jurisdictions."

Now, what that actually means is their policy is based on somebody else's legislation, because they've already told us that Yukon legislation is different from all the other legislation in terms of the amount; and this is what we're talking about, the amount. What they mean is that other jurisdictions have annual averaging, and we don't. So, it can't be in line with both. It can't be in line with somebody else's legislation and in line with the Yukon legislation at the same time. Otherwise, we wouldn't be here, saying that the Yukon is different from all these others and looking at all these others if the legislation was the same.

So, the question at the top "Should they be based on 36 or 37," why are they asking this question? Don't they know? The question should be: On what authority is the board basing their policy? On what authority are they averaging a workers' earnings over 12 months? They're trying to tell us that the authority is actually 36(2), but it isn't because if you read that, it says "Specifies our compensation is calculated ..." No, it doesn't. It's 37(a) tells you what the amount is to be based on, and it's the definition that tells you how to make the calculation, based on that amount, what that amount should be based upon, which is the period of time, et cetera.

So, method and manner of making the payment simply means "Do you want it twice a month, once a month, in the bank, or do you want to pick it up at the office?" So, when they do that method and manner and calculate it, that's when they start manipulating the language.

So, then we're told that in the fourth section:

"It seems that subsections 37 (a) ... could be the cause of confusion."

That's the bit about "the legislation is confused". If they base their policy on 36(2), that's why it's confusing, because it's supposed to be based on 37(a). So, this idea that there's a confusion between 37 (a) and (b) is not the case. It's really simple. It's only confusing because they've based their policy on the wrong authority.

So, to put this into perspective, Mr. Cable said to Mr. Armstrong in 1998, "On what authority does the board do this?"

And he said, "Section 36(2), and it's that in the definition." It isn't in the definition. What's in the definition refers to 37(a). So, they built their policy around the wrong answer all this time, and that's why it's in here.

That's why earlier, when they talked about "If a worker is entitled to earnings, they put 36 instead of 37(a)." That's the policy. So, it should be based on 37(a). It's supposed to be based on 37(a). Yukon policy is not in line with the Yukon legislation. An annual averaging in the Yukon, because it is a seasonal element, is a disaster. It's a disaster when it comes on top of the deeming, which is what 37(a) and (b) is about, the difference.

So, when the policy was being publicly consulted in 2000, the chairman, Mr. Schmekel, said he didn't know about the deeming process, and he was on the verge of saying, "If we've got the deeming, we don't need the averaging." So, you can imagine what both together would do. You get deemed. You're working for \$600 a week, and you've been working three months. They average that over 12 months, and then, they deem you capable of a job that pays \$300 a week. You've got nothing. So, what the confusion is they average you on a seasonal job, and then, they deem you for a full-time job. So, you're getting averaged for three months work, and then, deemed capable of working 12 months. So, that isn't fair. If they want to average you on three months, they should be deeming you for a three-month job. That's where the confusion is, and the confusion is because they based their policy on the wrong authority. So, it should be based on 37(a), and that idea of option #2, which says "the rates set out in short and long term rates," et cetera, is another one where we're being asked again to accommodate their policy and legislation, which indicates it's not related to the legislation at the moment.

So, because they've been doing it wrong; they should be doing it right. So, no change is the option. Otherwise, we're rewarding this mismanagement and their idea of what "fair" is over the last 13 years, which has put injured workers on welfare. That's the end of that.

**Chair Patrick Rouble:** Any other comments?

(No audible response)

**Chair Patrick Rouble:** We're heard some comments about issue 17 already. Would anyone like to add to that discussion?

**Rob King:** Wasn't there just something brought out about the minimum compensation level that the board ordered?

**Chair Patrick Rouble:** Yes, points have been raised about it.

(No audible response)

**Chair Patrick Rouble:** Can we move on to issue 18. Would anyone like to point out any thoughts on issue 18, or should we move on to 19?

(No audible response)

**Chair Patrick Rouble:** Issue 19, any comments on 19, or shall we move on to 20?

**Alan Byrom:** I just wanted to comment here. It says:

“The Yukon legislation is at the high end ...”

Well, that’s good; the higher, the better! The worst is injured workers retiring without a pension. They’re a burden on the community, they’re a burden on the worker. The worker loses his dignity if he doesn’t have a pension. As it is now, I think it’s good. I think it’s all right. So, any reduction in that would be an impoverishment, because it’s not a huge amount of money. It’s all relative to how much time you’re on comp. It’s relative to how much comp you’re getting, which is relative to how much you were making; and it’s only a fraction really of what you would have been getting in a pension if you hadn’t lost your ability to work in your previous occupation.

**Chair Patrick Rouble:** Thank you. Any other comments, or should we moved to issue 20?

(No audible response)

**Chair Patrick Rouble:** Issue 20, any comments on issue 20, or shall we move to 21?

(No audible response)

**Chair Patrick Rouble:** Issue 21, Mr. King.

**Rob King:** It talks here about:

“Manitoba amended their legislation in April of 2005 to remove the cap on maximum insurable earnings.”

Well, I have to congratulate them. They stepped out of the status quo and they did something. I think the Yukon could be doing the same sort of things on a lot of these issues. Instead of being one of the sheep, the Yukon should be a leader on a number of issues in there; and a number of other jurisdictions might say, “Heh, look at, this is working in the Yukon. Why don’t we accept this? Why don’t we take a look at this?”

I think this maximum wage and assessable earnings rates, the way it's determined could be looked at and scrutinized a little bit better than what it is right now or calculated a little bit better than the way it is now; because it's always based on the previous year's stuff.

What they do is take the average earnings of Yukoners, 80 percent of Yukon workers, that's how they come up with 69,500 where it is right now, and that comes from Stats Canada. Stats Canada provides the information that the Yukon uses in their maximum wage rate. I think this Manitoba method could be looked at a little closer up here, too.

**Chair Patrick Rouble:** Thank you. Any other comments on issue 21?

(No audible response)

**Chair Patrick Rouble:** Well, that concludes the issues that we were looking at this morning. Would anyone like to make any kind of closing comments or overall comments?

**Alan Byrom:** Just on closing, I would like to say that 75 percent of the earnings in the Yukon legislation, I think this was very carefully thought out. This was not an arbitrary choice. This was also a choice based on research; and it was a very wise choice, because it's the best option for the broadest number of workers in this kind of seasonal situation. So, we have to understand that that choice that was previously made was also based on research. It was not arbitrary. It was very carefully chosen, and it was a wise choice; and the fact that it's different from other legislation is the seasonal element. The averaging that other jurisdictions do, somebody in the administration looking at it and thinking, "Wow, these guys are really getting a load of money," doesn't actually pan out in reality. It is healthy, but it's not full; and compensation, although full or fair, it's never complete. You never get your body back. So, I think this is very carefully-thought-out legislation, a very carefully-thought-out choice; and it's the best option. Any other option is less, and less means a lot less. It means poverty. It's not good for the individual, for the community or anyone. So, any idea that the WCB can't afford it should be counted right now, paying this amount. All the mismanagement costs, all of that together, remember the mismanagement, it would go over to the advocate, the independent appeal tribunal, the advocate's office, all the loss, all the amendments, all of that together could not make a dent in the solvency of the fund. Any rationalization that what the Yukon guarantees so far is a threat to the solvency of the fund is really not credible.

Employers have already been told, "Your premiums are going up to cover the claims costs." To now suggest that we're going to cover the claims costs by

reducing benefits is an attempt to have your cake and eat it, too. They shouldn't really be listened to without very careful thought. So, that's my closing comment.

**Chair Patrick Rouble:** Thank you. Mr. King.

**Rob King:** This Act talks about what a lot of other jurisdictions do, how they operate and whatnot. I don't have the stats in front of me, but most of these other jurisdictions are all in the red. They're all operating at a loss. They're all crying for money. The Yukon isn't. What does that tell you? Our system is working, but there is still this determination to reduce, reduce benefits, reduce annuities, reduce, reduce, reduce, reduce. I think we're the best in the country right now financially-speaking wise, what you have here in the investments. So, I think that has to be considered when you're comparing it to other jurisdictions, that they're all in the red. We're not, and that's not indicated anywhere in this paper here.

**Chair Patrick Rouble:** Thank you. Well, I would like to thank everyone for their participation and their comments. The panel genuinely appreciates the amount of hard work that you've put into this and the careful thought and attention and for taking the time out of your day to come and share your thoughts with us.

We would also like to remind you, too, that you may make additional comments to us via e-mail or in writing, and that we will consider all of that when the panel sits down and deliberates the issues.

That being said, we'll adjourn. We'll reconvene at one o'clock and meet with the Stakeholder Advisory Groups, and the public is welcome to attend that, as well.

(The meeting adjourned at 11:40 a.m.)